

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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MICHAEL MCCARTHY, *et al.*,

Plaintiffs,

v.

CHARLES D. BAKER, *et al.*,

Defendants.

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) CIVIL ACTION NO.  
) 1:20-cv-10701-DPW  
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**JOINT STATEMENT AS TO ADVANCING TRIAL ON THE MERITS**

**POSITION OF THE PLAINTIFFS:**

The Plaintiffs<sup>1</sup> would prefer to consolidate trial on the merits with the upcoming hearing if possible, but are not currently in a position to know whether this will in fact be possible. Notably, the Plaintiffs do not yet know what evidence the Commonwealth Defendants will submit to the Court, so we are not in a position to assess whether it will be necessary to counter that evidence, or whether there are otherwise any significant factual issues that would require additional submissions and/or witness testimony. As such, the Plaintiffs respectfully propose that the parties revisit this issue after the Commonwealth Defendants have submitted their opposition papers (which will take place on April 28, 2020). We note that Rule 65(a)(2) allows for consolidation “[b]efore or after beginning the hearing.”

**POSITION OF THE COMMONWEALTH DEFENDANTS:**

The Commonwealth Defendants—Governor Baker, Attorney General Healey, and Commissioners Bharel and Gagnon—have no objection to consolidation of trial on the merits

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<sup>1</sup> We understand that the Plaintiffs in *Cedrone, LLC, et al. v. Baker, et al.*, No. 1:20-cv-40041, take the same position, but the CM/ECF system does not allow us to file documents on their behalf of those parties in the instant action.

with any hearing on the pending motions for interlocutory injunctive relief pursuant to Federal Rule of Civil Procedure 65(a)(2), provided, in light of health concerns due to COVID-19, that the cases are submitted on the papers and no live witnesses are called to testify. This case is like *New England Antivivisection Society, Inc. v. United States Surgical Corp., Inc.*, in that “all of the material upon which a judgment should be made has been presented to [the court] and it’s essentially material in writing.” 889 F.2d 1198, 1201 n. 3 (1st Cir. 1989) (affirming this Court’s order of consolidation pursuant to Fed. R. Civ. P. 65(a)(2)).

Dated: April 27, 2020

THE PLAINTIFFS,  
By their attorneys,

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**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on April 27, 2020.

/s/ David D. Jensen  
David D. Jensen